

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
JAMES ELLIS and WILLIAM PERRY)	
)	Case No.: 1:15-cv-14128-WGY
Plaintiffs,)	
)	ORAL ARGUMENT REQUESTED
v.)	
)	
FIDELITY MANAGEMENT TRUST)	
COMPANY,)	
)	
Defendant.)	
_____)	

DEFENDANT’S MOTION TO DISMISS THE COMPLAINT

Defendant Fidelity Management Trust Company (“Fidelity”) hereby moves to dismiss the class action complaint filed by plaintiffs James Ellis and William Perry (the “Complaint”). For the reasons stated in the accompanying Memorandum in Support of Defendant’s Motion to Dismiss the Complaint, the Complaint should be dismissed entirely and with prejudice because (i) plaintiffs fail to state a claim for any ERISA violation; (ii) plaintiffs do not allege that Fidelity has relevant fiduciary status with respect to its fee for managing the Managed Income Portfolio; and (iii) plaintiffs’ claims are time-barred under ERISA § 413, 29 U.S.C. § 1113.

WHEREFORE, Fidelity respectfully requests dismissal of the Complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Fidelity requests a hearing on this Motion. Fidelity submits that a hearing shall assist the Court in its consideration and resolution of the issues presented herein.

Dated: January 20, 2016

Respectfully submitted,

FIDELITY MANAGEMENT TRUST
COMPANY

By its attorneys,

/s/ Gregory F. Jacob

Brian D. Boyle (*pro hac vice*)

Gregory F. Jacob (*pro hac vice*)

Meaghan VerGow (*pro hac vice*)

O'Melveny & Myers LLP

1625 Eye Street, N.W.

Washington, D.C. 20006

Tel.: (202) 383-5300

bboyle@omm.com

gjacob@omm.com

mvergow@omm.com

John J. Falvey, Jr. (BBO# 542674)

Alison V. Douglass (BBO# 646861)

Goodwin Procter LLP

Exchange Place

53 State Street

Boston, MA 02109

Tel: (617) 570-1000

jfalvey@goodwinprocter.com

adouglass@goodwinprocter.com

LOCAL RULE 7.1(A)(2) CERTIFICATION
AND CERTIFICATE OF SERVICE

I, Gregory F. Jacob, hereby certify that counsel for Defendants conferred with opposing counsel on January 19, 2016 and were unable to resolve or narrow the issues presented in this motion prior to filing.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 20, 2016.

/s/ Gregory F. Jacob
Gregory F. Jacob